IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7044 of 1990

with

SPECIAL CIVIL APPLICATION No 4971 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Y A SHAIKH (since deceased)

Versus

DIRECTOR OF ACCOUNTS & TRASURIES

Appearance:

1. Special Civil Application No. 7044 of 1990
   MR NS DESAI for Petitioner No. 1
   Mr. Nagesh Sood, AGP for Respondent No. 1-2
2. Special Civil Application No. 4971 of 1999
   MR RAJESH K DESAI for Petitioner No. 1
   Mr. Nagesh Sood, AGP for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 02/05/2003

COMMON ORAL JUDGEMENT

Heard Mr. Nagesh Sood, learned AGP appearing for the respondent in both these matters. Nobody appears on behalf of the petitioners in any of these petitions. It transpires from the record that petitioner in Special Civil Application No. 7044 of 1990 has died and his legal heirs are not brought on record and on that ground, the first petition would have been abated. However, subsequent petition is filed by the widow of the deceased. This petition is also pertaining to the same subject matter. Over and above quashing and setting aside of the order, the petitioner in the 2nd petition has also sought consequential reliefs. Since the widow of the deceased is pursuing the cause of the petitioner in the 2nd petition, she is also considered to be impleaded as a legal heir of the petitioner in the 1st petition and accordingly both these petitions are being disposed by this common order.

2. The short point involved in this petition is as to whether the disciplinary authorities are justified to initiate departmental proceedings despite the fact that the appeal is pending against the order of conviction. It is a settled proposition of law, and I am also of the view that there is no bar to proceed with the departmental proceedings. Mr. Sood has invited my attention to the decision of this Court in the case of N.C. Bhatt v. Controller, Food & Civil Supplies - 1998 (1) GLR Page 758, wherein this Court has held that, "Once a conviction is recorded by the criminal Court at the first instance, it is open for the disciplinary authority to examine the conduct of the Government employee which has led to his conviction on a criminal charge and the defence that the appeal against the conviction is pending and sentence has been suspended is no ground unless the conviction has been stayed by the appellate Court." The issue, involved in the present petition, is squarely covered by the Judgment of this Court and hence there is no question of quashing and setting aside the order of termination passed by the disciplinary authority. Even on merits also, the same does not warrant any interference by this Court at this stage. Since the order of dismissal is not disturbed by this Court, the petitioner is not entitled to claim any consequential benefits in the second petition.

3. It is however observed that if the conviction order which is challenged in the appeal before the Sessions Court which is pending and if such order is reversed by the appellate Court, it is open for the petitioner to approach the respondent authority for

quashing of the order of termination and for other consequential benefits and the respondent authorities shall pass the order in accordance with law and in the light of the order passed or that may be passed by the Sessions Court in the appeal against the conviction order.

4. With the above observations, both the petitions are disposed of. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]